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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-891]

Hand Trucks and Certain Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On April 24, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand determination, regarding the scope of the Hand Trucks Order¹ excluding the WelCom Products MCK Magna Cart pursuant to the CIT's remand order in WelCom Products, Inc. v. United States, Court No. 11-00370, Slip Op. 12-124 (September 27, 2012) (WelCom). See Results of Redetermination Pursuant to Court Order, Court No. 11-00370, dated December 20, 2012 (WelCom MCK Magna Cart Remand Results). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (Timken), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (Diamond Sawblades), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending its final scope ruling on WelCom Products' MCK Magna Cart. See the memorandum entitled "Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Final Scope Ruling – WelCom Products MC2 Magna Cart, MCI Magna Cart, and MCK Magna Cart," dated September 6, 2011 (Final Scope Ruling).

¹ See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 FR 70122 (December 2, 2004) (Hand Trucks Order).

EFFECTIVE DATE: May 4, 2013

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration – International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-1131 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2010, WelCom Products (WelCom) submitted a request inquiring whether three of its products, the MC2 Magna Cart, MCI Magna Cart, and MCK Magna Cart, are outside of the scope of the Hand Trucks Order. In the Final Scope Ruling, the Department found the MC2 Magna Cart and the MCI Magna Cart are not within the scope of the hand trucks order, but the MCK Magna Cart is within the scope of the Hand Trucks Order. WelCom challenged the Department's final determination with respect to the MCK Magna Cart, and U.S. producer Gleason Industries challenged the Department's final determination with respect to the MC2 Magna Cart and the MCI Magna Cart. The Court sustained the Department's ruling with respect to the latter two products, but found the Department's decision regarding the MCK Magna Cart to be unreasonable. With respect to the MCK Magna Cart, the Court found the Department had not justified its conclusion in light of the Department's prior scope rulings, and, therefore, the ruling must be set aside and reconsidered. The Court ordered the Department to reconsider its conclusion that the entire telescoping portion of the frame must be less than 5/8" in diameter in order for a product to meet scope exclusion language in the order, and to further consider the record developed in the ITC injury determination. See WelCom at 14. Pursuant to

the Court's order in WelCom, in WelCom MCK Magna Cart Remand Results we determined that the MCK Magna Cart is outside the scope of the Hand Trucks Order.² The CIT sustained the Department's remand redetermination on April 24, 2013. See WelCom Products, Inc. v. United States, Court Number 11-0370, Slip Op. 1354, April 24, 2013.

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's April 24, 2013, judgment sustaining the Department's remand redetermination construing the scope of the Hand Trucks Order as not covering WelCom's MCK Magna Cart constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of WelCom's MCK Magna Cart from the PRC pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate on WelCom's MCK Magna Cart will be zero percent.

Amended Final Scope Ruling

Because there is now a final court decision with respect to WelCom's MCK Magna Cart, the Department amends its final scope ruling and now finds that the scope of the Hand Trucks

² The Department noted that it was conducting the remand respectfully under protest. See WelCom MCK Magna Cart Remand Results at 2. See also Viraj Group, Ltd. v. United States, 343 F.3d 1371 (Fed. Cir. 2003).

Order does not cover WelCom's MCK Magna Cart. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate on WelCom's MCK Magna Cart will be zero percent. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct CBP to liquidate entries of WelCom's MCK Magna Cart without regard to antidumping duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

April 29, 2013
Date

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